

REMARKS

Claims 1-74 are currently pending in this application. By this Amendment, no claims are cancelled, independent 1 and 38 and dependent claims 6, 8, 10, 13, 27, 30, 45, 47, 50, 54, 58, 64, and 67 are amended, and no new claims are added. Applicants aver that no New Matter is introduced hereby.

Applicants tender the instant Response in order to place the application in condition for allowance without raising new issues requiring additional search or consideration by the Examiner. The instant Response was not earlier tendered because the procedural posture of the application did not warrant the amendments presented herewith.

Entry and favorable consideration of this Amendment is earnestly solicited so that the claimed subject matter hereof may timely pass to issuance as U.S. Letters Patent.

Claims Rejections under 35 U.S.C. §102

Pending claims 1-30 and 38-67 stand rejected allegedly anticipated by the '537 patent to Rise (Rise).

Applicants respectfully traverse the rejections.

Of course for this ground of rejection to stand Rise must disclose *each and every* element of the rejected claims. Applicants respectfully assert that Rise fails to disclose *each and every* element of the rejected claims and for that reason alone the rejection grounded solely upon Rise fails and should be withdrawn.

In addition, Applicants respectfully suggest that Rise could be viewed as essentially non-analogous art inasmuch that Rise is directed to treatment of anxiety and is completely devoid of any disclosure regarding key aspects (i.e., claimed features) of the instant invention. As one example, Applicants point to the title of Rise: "Techniques

for Treating Anxiety by Brain Stimulation and Drug Infusion.” Notably, Rise also does not contemplate delivery of palliative drug therapy to the intrathecal space, but rather appears to provide for delivery of stimulation and/or drug therapy within a portion of a brain.

In addition, Rise does not provide any structure or methods for monitoring for symptoms of heart failure or pathologies related to heart failure. The foregoing are affirmatively recited, directly or indirectly, in the rejected claims and thus provide another distinction between the claimed invention and Rise.

Futhermore, Rise does not even mention the following: “heart failure,” “cardiac,” “ischemia,” “hypertension,” “alternans,” and “S-T segment” (indicative of an ischemic event such as myocardial infarct).

Since the claims tendered herewith include limitations not found in Rise, either explicitly or inherently, then Rise cannot support the rejection and same stands overcome.

Rejection under 35 U.S.C. §103

Claims 31-37 and 68-74 stand rejected as allegedly being unpatentable over Rise in view of the *British Journal of Anesthesia* article by Buerkle et al. (Buerkle).

The remarks regarding Rise provided above are hereby incorporated by reference as if fully set forth herein. As a non-analogous reference Rise cannot provide adequate foundation for a *prima facie* obviousness rejection and that ground alone the posited combination fails.

Furthermore, much as Rise is directed to treating anxiety by brain stimulation and/or drug infusion Buerkle is directed to *pain relief* and does not contemplate symptoms and/or pathologies related to heart failure. Thus, the proposed combination fails to provide one of skill in the art with the claimed invention.

Also, Applicants respectfully suggest that neither Rise nor Buerkle teach or suggest the claimed invention nor provide motivation for those of skill in the art to combine them together (although as pointed out above, such a combination fails).

Conclusion

For these and the foregoing reasons, Applicants respectfully assert that the application is now in condition for allowance. The Examiner is earnestly solicited to issue a Notice of Allowance in due course so the claimed invention may pass to timely issuance as U.S. Letters Patent.

The Examiner is invited to contact the undersigned with any questions regarding this application. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

Date: December 12, 2006

/Paul H. McDowall/

Paul H. McDowall
Registration No. 34,873
Medtronic, Inc.
Telephone: (763) 514-3351
Facsimile: (763) 514-6982
Customer No. 27581